

STATE OF NORTH DAKOTA

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF MENTAL HEALTH & SUBSTANCE ABUSE SERVICES
1237 West Divide Avenue, Suite 1C
Bismarck, ND 58501-1208**

Request For Proposal (RFP)

Problem Gambling Awareness Initiative

RFP Number: 325-05-09-076

Date of Issue: **December 21, 2005**

**Procurement Officer: Don Wright
Division of Mental Health & Substance Abuse Services**

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SECTION ONE INTRODUCTION AND INSTRUCTIONS

1.01

Purpose of the RFP

The North Dakota Department of Human Services, Division of Mental Health and Substance Abuse Services, hereafter know as “purchasing agency” is soliciting proposals for the provision of an awareness campaign to raise awareness, educate and provide resource information regarding problem gambling in North Dakota.

1.02

Contact Person, Telephone, Fax, E-mail

PROCUREMENT OFFICER: Don Wright, Assistant Director
PHONE: 701-328-8922
FAX: 701-328-8969
TTY Users call: 1-800-366-6888 (Relay North Dakota)
E-MAIL: sowrid@state.nd.us

The procurement officer is the point of contact for this RFP. All vendor communications regarding this RFP must be directed to the procurement officer. Unauthorized contact regarding the RFP with other State employees of the purchasing agency may result in the vendor being disqualified, and the vendor may also be suspended or disbarred from the state bidders list.

1.03

RFP Schedule

This schedule of events represents the State’s best estimate of the schedule that will be followed for this RFP. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule will be shifted by the same number of days.

| | Date |
|---|----------|
| RFP Issued..... | 12-20-05 |
| Deadline for Receipt of Questions and Objections Related to RFP | 01-04-06 |
| Response to Questions and Objections Related to RFP..... | 01-06-06 |
| Proposal Due Date | 01-12-06 |
| State Issues Notice of Intent to Award | 01-23-06 |
| State Issues Contract Approximately | 01-30-06 |

1.04

Return Mailing Address and Deadline for Receipt of Proposals

Each proposal must be submitted in one (1) original and three (3) copies. Proposals must be submitted in sealed packages or envelopes and clearly marked with the due date and the statement "PROBLEM GAMBLING AWARENESS INITIATIVE, ATTENTION: Don Wright" in large print, using a felt-tip marker in a prominent position on the package or envelope. Electronic or facsimile copies will not be accepted. Proposals must be received by the DMHSAS no later than 5 pm, Central Time, on January 12, 2006.

Applicants mailing proposals should allow a sufficient mail delivery period to ensure timely receipt of their proposals. Proposals received after this time will not be accepted for consideration. All proposals must be mailed or delivered to:

Don Wright, Assistant Director
DEPARTMENT OF HUMAN SERVICES
Division of Mental Health & Substance Abuse Services
Problem Gambling Awareness Initiative
RFP Number: 325-05-09-076
1237 West Divide Avenue, Suite 1C
Bismarck, ND 58501-1208

1.05

Assistance to Offerors with a Disability

Offerors with a disability that need an accommodation should contact the procurement officer prior to the deadline for receipt of proposals so that reasonable accommodation can be made.

1.06

Deadline for Receipt of Questions and Objections

Offerors must carefully review this solicitation, the contract, and all attachments for defects, questionable, or objectionable material. All questions must be in writing and directed to the purchasing agency, addressed to the procurement officer, and cite the subject RFP number. The procurement officer must receive these written requests by the deadline specified in the RFP Schedule to allow issuance of any necessary amendments.

This will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which an award could not be made. Protests based on the content of the solicitation will be disallowed if these faults have not been brought to the attention of the procurement officer, in writing, before the time indicated in the RFP Schedule.

If the question may be answered by directing the questioner to a specific section of the RFP, then the procurement officer may answer the question over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The procurement officer will make this determination. Oral communications are considered unofficial and non-binding on the State. The offeror must confirm telephone conversations in writing.

1.07

Approved Vendor Registration Requirements

North Dakota law requires that every person or entity that desires to bid or submit a proposal for contracts for commodities or services be an approved vendor in order to be placed on the State's bidders list. An offeror that is not registered by the deadline for receipt of proposal will be determined to be non-responsive, and its proposal will be rejected.

To become an approved vendor, offerors must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry. Prospective offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list that will be used for this solicitation is commodity code 915-01 and 952-06.

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.state.nd.us/csd/spo/vendor-resources.html>. Contact the North Dakota Vendor Registry at 701-328-2773 or infospo@state.nd.us for assistance.

1.08

Pre-proposal Conference

No pre-proposal conference will be held for this RFP. Offerors are advised to carefully review the RFP and all attachments and submit all questions to the procurement officer by the deadline indicated for submission of questions in the RFP schedule.

1.09

Amendments to the RFP

If an amendment to this RFP is issued, it will be provided to all offerors that were mailed a copy of the RFP and to those that have requested a copy of the RFP from the procurement officer.

1.10**News Releases**

News releases related to this RFP will not be made without prior approval of the procurement officer or project manager designated by the State.

1.11**Notice Provided**

Notice of this solicitation has been provided in accordance with N.D.C.C. § 54-44.4-09.

The Request for Proposal and any amendments to the RFP will be posted on the following website: <http://www.state.nd.us/humanservices>.

SECTION TWO

Background Information

2.01

Budget

The estimated budget for completion of this project is between \$70,000 and \$80,000. Proposals priced at more than \$80,000 will be considered non-responsive.

SECTION THREE SCOPE OF WORK

3.01 Scope of Work

The North Dakota Department of Human Services (DHS), Division of Mental Health and Substance Abuse Services (DMHSAS), is soliciting proposals to assist DMHSAS in raising the awareness of problem gambling in North Dakota. Through this solicitation, DMHSAS intends to provide information to North Dakota residents on the issues, consequences, and symptoms of problem gambling and resources available to assist the problem gambler and their family. A variety of mediums may be utilized in achieving the goals of this initiative.

While it is the intent of this initiative to impact the general population statewide, the successful proposal must address placing an emphasis on youth gambling issues. The successful proposal will utilize previously developed resources in addition to those proposed in their proposal. The proposal will also address collaborative efforts with other entities and programs involved with problem gambling.

The proposal must address how program effectiveness will be measured and evaluated.

3.02 Prior Experience

No specific minimums have been set for this RFP. The proposal should address applicants past experience and expertise in the subject area.

SECTION FOUR GENERAL CONTRACT INFORMATION

4.01

Contract Term, Extension and Renewal Options

The State intends to enter into a contract with an effective date beginning January 30, 2006 and ending June 30, 2007.

The State reserves the right to extend the contract period for an additional period of time, not to exceed twelve (12) months, beyond the normal expiration date of the contract, upon mutual written agreement by both parties.

This contract may be renewed upon satisfactory completion of the initial contract term. The state reserves the right to execute up to two (2) options to renew this contract annually under the same terms and conditions for a period of twelve (12) months each. This contract will not automatically renew. The State will provide written notice to the contractor of its intent to renew this contract at least thirty (30) days before the scheduled contract expiration date.

4.02

Standard Contract Provisions

The successful offeror will be required to sign and submit the contract attached to this RFP (Attachment A). The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the offeror's proposal. No alteration of these provisions will be permitted without prior written approval from the purchasing agency.

Offerors are instructed to contact the procurement officer in writing by the deadline set for questions with any concerns regarding the contract provisions.

4.03

Proposal as a Part of the Contract

Part or all of this RFP and the successful proposal may be incorporated into the contract.

4.04

Additional Terms and Conditions

The State reserves the right to add, delete, or modify terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

4.05

Supplemental Terms and Conditions

Proposals including supplemental terms and conditions may be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the State's right's under any contract resulting from the RFP will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- (a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- (b) if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

4.06

Contract Approval

This RFP does not, by itself, obligate the State. The State's obligation will commence when the purchasing agency approves the contract. Upon written notice to the contractor, the State may set a different starting date for the contract. The State will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

4.07

Contract Changes - Unanticipated Amendments

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the project manager designated by the State will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of amendments.

The contractor will not commence additional work until the project director has secured any required State approvals necessary for the amendment and issued a written contract amendment, approved by the purchasing agency.

4.08

Taxes and Taxpayer Identification

The contractor must provide a valid Vendor Tax Identification Number as a provision of the contract.

The State is not responsible for and will not pay local, state, or federal taxes. The State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

A contractor performing any contract, including service contracts, for the United States Government, State of North Dakota, counties, cities, school districts, park board or any other political subdivisions within North Dakota is not exempt from payment of sales or use tax on material and supplies used or consumed in carrying out contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties. Contact the North Dakota Tax Department at 701-328-3470 or visit its website at www.ndtaxdepartment.com for more information.

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the state as required by law. Contact the North Dakota Tax Department at 701-328-3125 or visit its web site for more information.

4.09

Proposed Payment Procedures

The State will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and the project director has approved invoice.

The State will not make any advanced payments before performance by the contractor under this contract.

4.10

Inspection & Modification - Reimbursement for Unacceptable Performance

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project manager designated by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. Should the project manager determine that corrections or modifications are necessary in order

to accomplish its intent, the project manager may direct the contractor to make changes. The contractor will not unreasonably withhold changes.

Substantial failure of the contractor to perform the contract may cause the State to terminate the contract. In this event, the State may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

4.11

Termination for Default

If the project manager designated by the purchasing agency determines that the contractor has refused to perform the work or has failed to perform the work with diligence as to ensure its timely and accurate completion, the State may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all or the remaining work.

This clause does not restrict the State's right to termination under the contract provisions of the Service Contract, attached.

**SECTION FIVE
EVALUATION CRITERIA AND CONTRACTOR SELECTION**

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS CONTRACT IS 100

**5.01
Evaluation Criteria**

| Category | Percent of Total Points |
|--|--------------------------------|
| Compliance with requirements specified in RFP (yes/no) | 0% |
| Offerors qualifications and experience | 25% |
| Scope of Service | 50% |
| Budget and Budget Narrative | 25% |
| TOTAL | 100% |

**5.02
Oral Presentations**

After any discussions for clarifications and the initial evaluation of proposals, the two offerors whose proposal receives the highest score and is determined to be reasonably susceptible for award may be required to make an oral presentation of the proposed solution for the evaluation committee.

Offerors will be responsible for all costs associated with the providing the presentation.

SECTION SIX PROPOSAL FORMAT AND CONTENT

6.01

Proposal Format and Content

The State discourages overly lengthy and costly proposals; however, in order for the State to evaluate proposals fairly and completely, offerors must follow the format set out in this RFP and provide all information requested.

6.02

Introduction

Proposals must include the complete name and address of offeror's firm and the name, mailing address, and telephone number of the person the State should contact regarding the proposal.

Proposals must confirm that the offeror will comply with all provisions in this RFP. The proposal must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota).

Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

6.03

Understanding of the Project

Offerors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project, project schedule, and contract terms and conditions. Offerors must also identify any pertinent issues and potential problems related to the project.

6.04

Qualifications and Experience

Offerors must describe the experience of their firm in completing similar projects. Additionally, offerors must information specific to the personnel assigned to accomplish the work called for in this RFP. Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed:

- (a) title;
- (b) resume;
- (c) description of the type of work the individual will perform; and
- (d) the number of estimated hours for each individual named above.

If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

6.05

Budget and Budget Narrative

The proposed budget must clearly relate to the scope of service and proposed plan to achieve the scope of service and be well documented and justified in the budget narrative.

SECTION SEVEN STANDARD PROPOSAL INFORMATION

7.01

Authorized Signature

An individual authorized to bind the offeror to the provisions of the RFP must sign all proposals.

7.02

State Not Responsible for Preparation Costs

The State will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

7.03

Conflict of Interest

Offerors must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota). The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the offeror's proposal. The State's determination regarding any questions of conflict of interest is final.

7.04

Offeror's Certification

By signature on the proposal, an offeror certifies that it complies with:

- a) the laws of the State of North Dakota;
- b) North Dakota Administrative Code;
- c) all applicable local, state, and federal laws, code, and regulations;
- d) the applicable portion of the Federal Civil Rights Act of 1964;
- e) the Equal Employment Opportunity Act and the regulations issued by the federal government;
- f) the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- g) all terms, conditions, and requirements set forth in this RFP;
- h) a condition that the proposal submitted was independently arrived at, without collusion;
- i) a condition that the offer will remain open and valid for the period indicated in this solicitation; and

- j) a condition that the firm and any individuals working on the contract do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

If any offeror fails to comply with the provisions stated in this paragraph, the State reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

7.05

Amendments to Proposals and Withdrawals of Proposals

Offerors may amend or withdraw proposals prior to the deadline set for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to the State's request. After the deadline, offerors may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made. The procurement officer may permit withdrawal of the proposal upon verifying that a substantial mistake has been made.

7.06

Alternate Proposals

Offerors may submit only one proposal for evaluation.

Alternate proposals (proposals that offer something different than what is requested) will be rejected.

7.07

Subcontractors

Subcontractors may be used to perform work under this contract. If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If a proposal with subcontractors is selected, the offeror must provide the following information concerning each prospective subcontractor within five working days from the date of the State's request:

- (a) complete name of the subcontractor;
- (b) complete address of the subcontractor;
- (c) type of work the subcontractor will be performing;
- (d) percentage of work the subcontractor will be providing;
- (e) evidence, as set out in the relevant section of this RFP, that the subcontractor is registered and, if applicable, holds a valid North Dakota business license; and

- (f) a written statement, signed by each proposed subcontractor, that clearly verifies that the subcontractor is committed to render the services required by the contract.

An offeror's failure to provide this information, within the time set, may cause the State to consider its proposal non-responsive and reject it. The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the State's procurement officer or project manager designated by the State.

Any subcontractor must certify that it complies with section 7.04 Offeror's Certification.

7.08 Joint Ventures

Joint ventures are acceptable. If submitting a proposal as a joint venture, the offeror must submit a copy of the joint venture agreement that identifies the principles involved and its rights and responsibilities regarding performance and payment.

Any joint venture agreement must confirm compliance with section 7.04 Offeror's Certification.

7.09 Disclosure of Proposal Contents and Compliance with North Dakota Open Records Laws

All proposals and other material submitted become the property of the State and may be returned only at the State's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2).

Offerors may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the offeror must be clearly identified, and the offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information. <http://www.ag.state.nd.us/OpenRecords/ORM.htm>

After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer, in consultation with the Office of the Attorney General, will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately.

7.10

Evaluation of Proposals

All proposals will be reviewed to determine if they are responsive to the requirements of this solicitation. The procurement officer or an evaluation committee will evaluate responsive proposals. The evaluation will be based solely on the evaluation factors set forth in this RFP. The evaluation will consider information obtained subsequent to any discussions with offerors determined to be reasonable for award and any demonstrations, oral presentations, or site inspections, if required in this RFP.

7.11

Right of Rejection

The State reserves the right to reject any proposals, in whole or in part. Proposals received from debarred or suspended vendors will be rejected. The procurement officer may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the State. If an offeror does so, the procurement officer may determine the proposal to be non-responsive, and the proposal may be rejected.

The procurement officer may waive minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are insignificant, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision,

The State reserves the right to reject any proposal determined to be not responsive, and to reject the proposal of an offeror determined to be not responsible. The State also reserves the right to refrain from making an award if it determines it to be in its best interest.

7.12

Clarification of Offers

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may

not result in a material or substantive change to the proposal. The initial evaluation may be adjusted because of a clarification under this section.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

7.13

Discussions and Best and Final Offers

The State may conduct discussions or request best and final offers with offerors that have submitted proposals determined to be reasonably susceptible for award. The State is not obligated to do so, therefore, vendors should submit their best terms (cost and technical). The purpose of these discussions is to ensure full understanding of the requirements of the RFP and the offeror's proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the proposal evaluation committee. If modifications to the proposal are made as a result of these discussions, the modifications must be put in writing.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made.

7.14

Preference Laws

The preference given to a resident North Dakota offeror will be equal to the preference given or required by the state of the nonresident bidder. A "resident" North Dakota bidder, offeror, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which a contract was awarded. For a listing of state preference laws, visit the following website: http://tpps.das.state.or.us/purchasing/pref-law/reciprocal_detail.php or contact the North Dakota State Procurement Office at 701-328-2683.

7.15

Contract Negotiation

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, will be within the scope of the request for proposals and limited to those items that would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may

terminate negotiations and negotiate with the offeror of the next highest-ranked proposal.

If contract negotiations are commenced, they will be held by phone, email, or held at:

Division of Mental Health & Substance Abuse Services
1237 West Divide Avenue
Bismarck, ND 58501

If contract negotiations are held, the offeror will be responsible for all cost including its travel and per diem expenses.

7.16

Notice of Intent to Award - Offeror Notification of Selection

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award and send copies to all offerors. The Notice of Intent Award will set out the names and addresses of all offerors and identify the proposal selected for award. The scores and placement of other offerors will not be part of the Notice of Intent to Award.

The successful offeror named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts relating to the project until both the successful offeror and the State sign the contract.

7.17

Protest and Appeal

North Dakota law provides that an interested party may protest a solicitation. If an interested party wishes to protest the content of this RFP, the protest must be received, in writing, by the procurement officer at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract. If an offeror wishes to protest the award of a contract or proposed award of a contract, the protest must be received, in writing, by the procurement officer within seven calendar days after the date the Notice of Intent to Award was issued.

ATTACHMENT A SAMPLE CONTRACT TEMPLATE

CONTRACT #

PURCHASE OF SERVICE AGREEMENT

WHEREAS, the State of North Dakota, acting through its North Dakota Department of Human Services, Mental Health and Substance Abuse Services Division (State), has determined the services referred to in the paragraph below entitled "Scope of Service" should be purchased; and

WHEREAS, [VENDOR NAME AND ADDRESS], (Vendor) proposes to provide those services;

NOW, THEREFORE, the State and Vendor enter into the following:

I. TERM OF THE AGREEMENT

The term of this agreement shall be from the ____ day of _____ 200__ through the ____ day of _____ 200__. However, this agreement may be terminated with or without cause by either party giving the other party thirty (30) days prior written notice.

II. SCOPE OF SERVICE

The Vendor agrees to provide

III. COMPENSATION

The State, upon written request of the Vendor, agrees to pay the Vendor \$ _____ for completing the scope of service. Total payment under the terms of this agreement shall not exceed \$ _____. **Final payment requests shall be submitted to the State no later than thirty (30) days after the expiration of this agreement.**

IV. VENDOR'S UNDERSTANDING OF TERM OF FUNDING

The Vendor understands that this agreement is a one-time agreement, and acknowledges that it has been furnished no assurances that this agreement may be extended for periods beyond its termination date.

V. VENDOR ASSURANCES

This agreement shall be construed according to the laws of the State of North Dakota. In connection with the furnishing of supplies or performance of work under this agreement, persons who contract with or receive funds to provide services to the North Dakota Department of Human Services are obligated and agree to comply with all local, state and federal laws, regulations and executive orders related to the performance of this agreement including but not limited to the following: Fair Labor Standards Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the North Dakota Human Rights Act, the Drug Abuse Prevention Treatment and Rehabilitation Act of 1970, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Alcohol, Drug Abuse and Mental Health Administration Reorganization Act of 1992, the Pro-children Act of 1994, and the Drug-free Workplace Act of 1988. Questions regarding the provision of services according to these Acts may be directed to Krista L. Andrews, Contract Officer, North Dakota Department of Human Services, Judicial Wing, State Capitol, 600 E. Boulevard, Bismarck, ND 58505 (701-328-2311 or 701-328-3975 TDD).

The Vendor certifies by signing this agreement that neither the Vendor, Subcontractor, nor their principals, are presently debarred, declared ineligible or voluntarily excluded from participation in transactions with the State or Federal Government by any Department or Agency of the Federal Government.

Vendor shall be an approved vendor with the Office of Management and Budget within the State of North Dakota as required by NDCC § 54-44.4-09.

VI. AUTHORITY TO CONTRACT

The Vendor shall not have the authority to contract for or on behalf of or incur obligations on behalf of the State. However, the Vendor may subcontract with qualified Vendors of services provided that any such subcontract shall acknowledge the binding nature of this agreement, and incorporate this agreement, together with its attachments as appropriate. The Vendor agrees to be solely responsible for the performance of any subcontractor.

VII. INDEPENDENT ENTITY

The Vendor shall perform as an independent entity under this agreement. The Vendor, its employees, agents, or representatives are not employees of the State for all purposes, including but not limited to, the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workers' Compensation Act. No part of this agreement shall be construed to represent the creation of an employer/employee relationship. The Vendor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Vendor's activities and responsibilities under this agreement.

VIII. NONPERFORMANCE

Failure by the Vendor to perform the terms of this agreement shall constitute a breach of contract, and shall result in the immediate termination of the agreement. In the event of a termination for breach by the Vendor, the State may retain, as liquidated damages, any payment to be made under this agreement which remains unpaid at the time of the breach, and may also recover from the Vendor, those amounts already paid for individual items of work which are incomplete at the time of the breach.

However, should a breach by the Vendor be caused by circumstances, beyond the control of the Vendor, and no fault of its own, so as to render the agreement impossible of performance by the Vendor, then the agreement shall be terminated. In the event of a breach, by the Vendor, in such circumstances, the State may set off, against any liability or obligations owed to the Vendor, under this agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach, but shall not be entitled to liquidated damages.

The State shall give written notice, to the Vendor, of the termination, which notice shall specify the effective date thereof.

IX. TERMINATION OF AGREEMENT FOR INADEQUACY OF FUNDS

It is agreed that in the event appropriations to the Department of Human Services are not obtained and continued at a level sufficient to allow for payments to the Vendor, for the services identified in Paragraph II, the obligations of each party hereunder may be terminated at the option of the State, provided that any such termination shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

X. INDEMNITY

Vendor agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (North Dakota), from any and all claims of any nature, including all costs, expenses, and attorneys' fees, which may in any manner result from or arise out of this agreement, except for claims resulting from or arising out of North Dakota's sole negligence. The legal defense provided by Vendor to North Dakota under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for North Dakota is necessary. Vendor also agrees to defend, indemnify, and hold North Dakota harmless for all costs, expenses, and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after termination of this agreement.

XI. INSURANCE

A. **Required Coverages.** Vendor shall secure and keep in force during the term of this agreement, from insurance companies authorized to do business in North Dakota, the following insurance coverages covering the Vendor for any and all claims of any nature which may in any manner arise out of or result from this agreement:

- 1) Automobile liability, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
- 2) Workers' compensation coverage meeting all North Dakota statutory requirements.

B. **General Insurance Requirements.** The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Vendor. The amount of any deductible or self-retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form, and must be placed with insurers rated "A" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. The policies shall be in form and terms approved by the State. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which it is excess.
- 3) North Dakota will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Vendor in excess of the minimum requirements set forth above. The duty to indemnify North Dakota under this agreement shall be not be limited by the insurance required in this agreement.
- 4) The legal defense provided to North Dakota under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for North Dakota is necessary.
- 5) Failure to provide insurance as required in this section is a material breach of contract entitling State to terminate this contract at any time effective upon delivery of notice to the Vendor.

XII. ACCESS TO BOOKS AND RECORDS

The State, federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Vendor which are pertinent to the services provided under this agreement for the purpose of making an audit, examination, or making excerpts and transcripts. This documentation shall be available for a period of three (3) years from the date of submission of the final expenditures report.

XIII. NOTICE

Any notice required or permitted to be given pursuant to this agreement may be personally served on either party by the party giving such notice, or may be served by certified mail, return receipt requested, addressed to the executive office of the party upon whom service is made.

XIV. INTEGRATION AND MODIFICATION

This contract constitutes the entire agreement between the Vendor and the State. No alteration, amendment, or modification in the provisions of this agreement shall be effective unless it is reduced to writing, signed by the parties and attached hereto.

XV. COLLATERAL CONTRACTS

Where there exists any inconsistency between this agreement and other provisions of collateral contractual agreements which are made a part of this agreement by reference or otherwise, the provisions of this agreement shall control.

XVI. APPLICABLE LAW

This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

XVII. ASSIGNMENT

Neither Party shall assign this agreement and rights without the written approval of the other Party. Such approval shall not be unreasonably withheld. This agreement shall be equally binding on the respective Parties, their successors and assigns.

XVIII. CONFIDENTIAL INFORMATION

The Vendor agrees not to use or disclose any information it receives from the State under this agreement that is confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this agreement or as authorized in advance by the State. The State agrees not to disclose any information it receives from the Vendor which the Vendor has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code § 44-04-18. The duty of the State and the Vendor to maintain confidentiality of information under this section continues beyond the term of this agreement, including any extensions or renewals.

XIX. OWNERSHIP OF WORK PRODUCT

All work product, equipment or materials created or purchased under this agreement belong to the State and must be delivered to State at State's request upon termination of this agreement. Vendor agrees that all materials prepared under this agreement are "works for hire" within the meaning of copyright laws of the United States and assigns to the State all rights and interests Vendor may have in the

materials it prepares under this agreement, including any right to derivative use of the material. Vendor shall execute all necessary documents to enable the State to protect its rights under this section. Use of work product or materials for purposes other than the scope of this agreement must be approved in writing by the State.

XX. COMPLIANCE WITH PUBLIC RECORDS LAWS

Vendor understands that, except for disclosures prohibited in Section XVIII, the State must disclose to the public upon request any records it receives from Vendor. Vendor further understands that any records which are obtained or generated by the Vendor under this agreement, except for records that are confidential under Section XVIII, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Vendor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

XXI. ATTORNEY FEES

In the event a lawsuit is instituted by the State to obtain performance due to any kind under this agreement, and the State is the prevailing party, Vendor shall, except when prohibited by N.D.C.C. § 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

XXII. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

The State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The State does not waive any right to a jury trial.

VENDOR

By _____ DATE

Its _____
(TITLE)

Vendor's Federal Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By _____ DATE
CAROL K. OLSON
EXECUTIVE DIRECTOR

By _____ DATE
KRISTA L. ANDREWS
CONTRACT OFFICER